

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 11868 of 2004

For Approval and Signature:

HON'BLE MR.JUSTICE J.R.VORA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES
 2. To be referred to the Reporter or not? : NO
 3. Whether Their Lordships wish to see the fair copy of the judgement? : NO
 4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO
 5. Whether it is to be circulated to the concerned Magistrate/Magistrates, Judge/Judges, Tribunal/Tribunals? : NO

RAMESHBHAI KOHYABHAI VAGHELA (CHUNARA)

Versus

STATE OF GUJARAT

Appearance:

1. Special Civil Application No. 11868 of 2004
MR HR PRAJAPATI for Petitioner No. 1
MR MR PRAJAPATI for Petitioner No. 1
MRS HB PUNANI, AGP for Respondent No.3
RULE SERVED for Respondent No.1-2

CORAM : HON'BLE MR.JUSTICE J.R.VORA

Date of decision: 01/02/2005

ORAL JUDGEMENT

1. This Special Civil Application under Article 226 of the Constitution of India has been filed by the

petitioner challenging his detention in pursuance of the order passed against him by Police Commissioner, Ahmedabad City, on 6th August, 2004, in exercise of powers conferred upon him under Section 3(1) of the Gujarat Prevention of Anti Social Activities Act, 1985 (PASA Act for short). The petitioner is under detention as bootlegger from 6th August, 2004 in pursuance of the above order.

2. The grounds of detention as placed on record reveal that the detaining authority took into consideration four criminal cases registered against the petitioner, under Bombay Prohibition Act, all before Prohibition Police Station, Southern Zone whereby the petitioner was found in possession of some quantity of country liquor. The detaining authority took into consideration the investigation papers in all four cases registered against the petitioner. Considering the material before him the detaining authority came to the conclusion that the petitioner was dealing in storing, selling and transporting prohibited country liquor and was bootlegger within the meaning of PASA Act. The detaining authority also came to the conclusion that the illegal activities of the petitioner were prejudicial to the maintenance of public order and were affecting the public health. The detaining authority also came to the conclusion that the illegal anti social activities of the petitioner were required to be prevented forthwith. After taking into consideration other measures which may be taken against the petitioner under general law, the detaining authority reached to the subjective satisfaction that there was no other alternative, except to detain the petitioner under the PASA Act. The detaining authority, therefore, passed the above said order of detention against the petitioner which is under challenge in this petition.

3. Learned advocate Mr. M.R.Prajapati, for the petitioner and learned AGP Mrs.H.B.Punani for the respondents were heard at length. The affidavit-in-reply filed by the detaining authority, as placed on record, by the learned AGP is also taken into consideration.

4. Out of various grounds urged on behalf of the petitioner and opposed and controverted by the learned AGP, it appears that this petition can be examined and disposed of on the sole issue that whether the order under challenge is vitiated by non-application of mind by the detaining authority.

5. Undoubtedly as referred to by the detaining

authority in the ground of detention served upon the petitioner, the petitioner was under judicial custody in all four cases came to be registered against the petitioner, when the order of detention was served upon the petitioner. In this respect, the detaining authority reached to the subjective satisfaction that though in all four cases registered against the petitioner, he was under judicial custody, but he was likely to file an application for bail at any time, and was likely to be released on bail by the court competent. The detaining authority also reached to the subjective satisfaction that on so releasing the petitioner on bail by the court competent, the petitioner was likely to continue his illegal anti social activities.

6. The facts of the present case are squarely covered by a decision of the Apex Court in the matter of Amritlal and other Vs. Union Government through Secretary, Ministry of Finance and others, reported in AIR 2000 (1) S.C. 3675, wherein the Apex Court observed that there must be cogent material before the officer passing the detention order that the detenu is likely to be released on bail, inference must be drawn from the available material on record and must not be the ipse dixit of the officer passing the order of detention. Likelihood of detenu's moving an application for bail is not a cogent material and the detention order based on such material was liable to be quashed.

7. In the present case also except investigation papers, in four crimes registered against the petitioner, no other material was placed before the detaining authority to infer that the detenu was likely to file an application for bail before the competent court. Likewise there was no material at all before the detaining authority to infer that on so filing an application for bail by the petitioner, he was likely to be released on bail. True it is that the order of detention can be passed even if the detenu is in custody, but in this regard, there must be cogent material before the detaining authority passing the detention order, in absence of such material, the inference drawn not based upon any material is vitiated. The order passed against the petitioner for detention, therefore, suffers from vice of non-application of mind in respect of moving a bail application by the petitioner and again releasing the petitioner on bail. The order under challenge, therefore, is required to be set aside on this ground alone that the detaining authority did not rely upon any material to infer as aforesaid vitiating the order of detention.

8. In the result, the petition is allowed. The order passed by the Police Commissioner, Ahmedabad City on 6th August, 2004, against the petitioner in exercise of powers under Section 3(1) of the PASA Act is hereby quashed and set aside. The petitioner RAMESHBHAI KOHYABHAI VAGHELA (CHUNARA) is hereby ordered to be set at liberty forthwith if he is not required to be detained in jail for any other purpose. Rule is made absolute. Direct service is permitted.

[J. R. VORA, J.]

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